

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1000796-D1 AND
ALL OTHER SEAMAN DOCUMENTS

Issued to: OLLIE GAITERS

DECISION OF THE COMMANDANT

1496

OLLIE GAITERS

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code Federal Regulations 137.30-1.

By order dated 8 July 1946, an Examiner of the United States Coast Guard at San Francisco, California, revoked Appellant's seaman documents upon finding him guilty of two narcotic drug law convictions. The specifications found proved allege that, on 5 November 1958 and 29 October 1959, Appellant was convicted by the Court of Special Sessions of the City of New York, Country of New York, a court of record, for violations of the Public Health Law, section 3305, a narcotic drug law of the State of New York. The first conviction is alleged to be for possession of heroin and the second one for possession and use of heroin.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of guilty to the charge and each specification.

No evidence was introduced by the Investigating Officer in view of the guilty pleas. Appellant testified that he completely stopped using narcotics after his second conviction. The Public Health Service report states that Appellant does not present "any clinical evidence of narcotic usage."

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and two specifications had been proved by plea. The Examiner then entered an order revoking all documents issued to Appellant although the Examiner stated that, in his opinion, the evidence establishes that Appellant is not now a user of, or addicted to, narcotics.

On appeal, it is contended that, since the Examiner found Appellant was not a user or addict, the order of revocation is in conflict with Commandant's Appeal Decisions Nos. 1037 and 1457.

APPEARANCE: Belli, Ashe and Gerry of California by Frederick A.

Cone, of Counsel.

OPINION

Appellant's contention is without merit. The two appeal decisions cited by counsel pertain to situations where there were

convictions for the use of, or addiction to the use of, narcotics. In such cases, and order of revocation may be averted by presenting satisfactory evidence of cure at the hearing. But later appeal decisions specifically state that the defense of cure is not relevant unless the conviction was for the use of, or addiction to, narcotics. Commandant's Appeal Decisions Nos. 1092 and 1253. Since one of Appellant's convictions rests solely on the possession of narcotics, the order of revocation does not conflict with Commandant's Appeal Decisions Nos. 1037 and 1457.

ORDER

The order of the Examiner dated at San Francisco, California, on 8 July 1964, is AFFIRMED.

W.D. Shields
Rear Admiral United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 7th day of April 1965.

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cure as defense cure, evidence of defense, cure

NARCOTICS STATUTE

cure as defense